

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]

# HOUSE BILL NO. 826

## 95TH GENERAL ASSEMBLY

1776L.01T

2009

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### AN ACT

To repeal sections 630.110, 632.489, and 632.495, RSMo, and to enact in lieu thereof three new sections relating to sexually violent predators.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 630.110, 632.489, and 632.495, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 630.110, 632.489, and 632.495, to read as follows:

630.110. 1. Except as provided in subsection 5 of this section, each person admitted to a residential facility or day program and each person admitted on a voluntary or involuntary basis to any mental health facility or mental health program where people are civilly detained pursuant to chapter 632, RSMo, except to the extent that the head of the residential facility or day program determines that it is inconsistent with the person's therapeutic care, treatment, habilitation or rehabilitation and the safety of other facility or program clients and public safety, shall be entitled to the following:

- (1) To wear his own clothes and to keep and use his own personal possessions;
- (2) To keep and be allowed to spend a reasonable sum of his own money for canteen expenses and small purchases;
- (3) To communicate by sealed mail or otherwise with persons including agencies inside or outside the facility;
- (4) To receive visitors of his own choosing at reasonable times;
- (5) To have reasonable access to a telephone both to make and receive confidential calls;
- (6) To have access to his mental and medical records;
- (7) To have opportunities for physical exercise and outdoor recreation;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (8) To have reasonable, prompt access to current newspapers, magazines and radio and  
18 television programming.

19 2. Any limitations imposed by the head of the residential facility or day program or his  
20 designee on the exercise of the rights enumerated in subsection 1 of this section by a patient,  
21 resident or client and the reasons for such limitations shall be documented in his clinical record.

22 3. Each patient, resident or client shall have an absolute right to receive visits from his  
23 attorney, physician or clergyman, in private, at reasonable times.

24 4. Notwithstanding any limitations authorized under this section on the right of  
25 communication, every patient, resident or client shall be entitled to communicate by sealed mail  
26 with the department, his legal counsel and with the court, if any, which has jurisdiction over the  
27 person.

28 5. Persons committed to a residential facility or day program operated, funded or  
29 licensed by the department pursuant to section 552.040, RSMo, **persons detained at a county**  
30 **jail or at a secure facility under section 632.484 or 632.489, RSMo, or persons committed**  
31 **to a secure facility under section 632.495, RSMo**, shall not be entitled to the rights enumerated  
32 in subdivisions (1), (3) and (5) of subsection 1 of this section unless the head of the residential  
33 facility or day program determines that these rights are necessary for the person's therapeutic  
34 care, treatment, habilitation or rehabilitation. In exercising the discretion to grant any of the  
35 rights enumerated in subsection 1 of this section to a patient, resident or client, the head of the  
36 residential facility or day program shall consider the safety of the public.

632.489. 1. Upon filing a petition pursuant to section 632.484 or 632.486, the judge  
2 shall determine whether probable cause exists to believe that the person named in the petition  
3 is a sexually violent predator. If such probable cause determination is made, the judge shall  
4 direct that person be taken into custody and direct that the person be transferred to an appropriate  
5 secure facility, including, but not limited to, a county jail. If the person is ordered to the  
6 department of mental health, the director of the department of mental health shall determine the  
7 appropriate secure facility to house the person under the provisions of section 632.495.

8 2. Within seventy-two hours after a person is taken into custody pursuant to subsection  
9 1 of this section, excluding Saturdays, Sundays and legal holidays, such person shall be provided  
10 with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as  
11 to whether the detained person is a sexually violent predator. At this hearing the court shall:

12 (1) Verify the detainee's identity; and

13 (2) Determine whether probable cause exists to believe that the person is a sexually  
14 violent predator. The state may rely upon the petition and supplement the petition with  
15 additional documentary evidence or live testimony.

16           3. At the probable cause hearing as provided in subsection 2 of this section, the detained  
17 person shall have the following rights in addition to the rights previously specified:

18           (1) To be represented by counsel;

19           (2) To present evidence on such person's behalf;

20           (3) To cross-examine witnesses who testify against such person; and

21           (4) To view and copy all petitions and reports in the court file, including the assessment  
22 of the multidisciplinary team.

23           4. If the probable cause determination is made, the court shall direct that the person be  
24 transferred to an appropriate secure facility, including, but not limited to, a county jail, for an  
25 evaluation as to whether the person is a sexually violent predator. If the person is ordered to the  
26 department of mental health, the director of the department of mental health shall determine the  
27 appropriate secure facility, **which may include a county jail as set forth in section 632.495,**  
28 to house the person. The court shall direct the director of the department of mental health to  
29 have the person examined by a psychiatrist or psychologist as defined in section 632.005 who  
30 was not a member of the multidisciplinary team that previously reviewed the person's records.  
31 In addition, such person may be examined by a consenting psychiatrist or psychologist of the  
32 person's choice at the person's own expense. Any examination shall be conducted in the facility  
33 in which the person is confined. Any examinations ordered shall be made at such time and under  
34 such conditions as the court deems proper; except that, if the order directs the director of the  
35 department of mental health to have the person examined, the director shall determine the time,  
36 place and conditions under which the examination shall be conducted. The psychiatrist or  
37 psychologist conducting such an examination shall be authorized to interview family and  
38 associates of the person being examined, as well as victims and witnesses of the person's offense  
39 or offenses, for use in the examination unless the court for good cause orders otherwise. The  
40 psychiatrist or psychologist shall have access to all materials provided to and considered by the  
41 multidisciplinary team and to any police reports related to sexual offenses committed by the  
42 person being examined. Any examination performed pursuant to this section shall be completed  
43 and filed with the court within sixty days of the date the order is received by the director or other  
44 evaluator unless the court for good cause orders otherwise. One examination shall be provided  
45 at no charge by the department. All costs of any subsequent evaluations shall be assessed to the  
46 party requesting the evaluation.

632.495. 1. The court or jury shall determine whether, by clear and convincing evidence,  
2 the person is a sexually violent predator. If such determination that the person is a sexually  
3 violent predator is made by a jury, such determination shall be by unanimous verdict of such  
4 jury. Any determination as to whether a person is a sexually violent predator may be appealed.

5           2. If the court or jury determines that the person is a sexually violent predator, the person  
6 shall be committed to the custody of the director of the department of mental health for control,  
7 care and treatment until such time as the person's mental abnormality has so changed that the  
8 person is safe to be at large. Such control, care and treatment shall be provided by the  
9 department of mental health.

10           3. At all times, persons ordered to the department of mental health after a determination  
11 by the court that such persons may meet the definition of a sexually violent predator, persons  
12 ordered to the department of mental health after a finding of probable cause under section  
13 632.489, and persons committed for control, care and treatment by the department of mental  
14 health pursuant to sections 632.480 to 632.513 shall be kept in a secure facility designated by the  
15 director of the department of mental health and such persons shall be segregated at all times from  
16 any other patient under the supervision of the director of the department of mental health. The  
17 department of mental health shall not place or house a person ordered to the department of  
18 mental health after a determination by the court that such person may meet the definition of a  
19 sexually violent predator, a person ordered to the department of mental health after a finding of  
20 probable cause under section 632.489, or a person committed for control, care, and treatment by  
21 the department of mental health, pursuant to sections 632.480 to 632.513, with other mental  
22 health patients. The provisions of this subsection shall not apply to a person who has been  
23 conditionally released under section 632.505.

24           4. The department of mental health is authorized to enter into an interagency agreement  
25 with the department of corrections for the confinement of such persons. Such persons who are  
26 in the confinement of the department of corrections pursuant to an interagency agreement shall  
27 be housed and managed separately from offenders in the custody of the department of  
28 corrections, and except for occasional instances of supervised incidental contact, shall be  
29 segregated from such offenders.

30           5. **The department of mental health is authorized to enter into a contract agreement**  
31 **with one or more county jails in Missouri for the confinement of persons ordered to the**  
32 **department of mental health after a determination by the court that such persons may**  
33 **meet the definition of a sexually violent predator or for the confinement of persons ordered**  
34 **to the department of mental health after a finding of probable cause under section 632.489.**  
35 **Such persons who are in the confinement of a county jail pursuant to a contract agreement**  
36 **shall be housed and managed separately from offenders in the custody of the county jail,**  
37 **and except for occasional instances of supervised incidental contact, shall be segregated**  
38 **from such offenders.**

39           6. If the court or jury is not satisfied by clear and convincing evidence that the person  
40 is a sexually violent predator, the court shall direct the person's release.

41           [6.] 7. Upon a mistrial, the court shall direct that the person be held at an appropriate  
42 secure facility, including, but not limited to, a county jail, until another trial is conducted. If the  
43 person is ordered to the department of mental health, the director of the department of mental  
44 health shall determine the appropriate secure facility to house the person. Any subsequent trial  
45 following a mistrial shall be held within ninety days of the previous trial, unless such subsequent  
46 trial is continued as provided in section 632.492.

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